
(2009) 01 DEL CK 0248
In the Delhi High Court
Case No : LPA No. 525 of 2008

Union of India

APPELLANT

Vs

Dewas Soya Limited

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Citation : (2011) 270 ELT 17

Hon'ble Judges : A.P. Shah, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Rajeev Saxena, for the Appellant; M.P. Devnath, for the Respondent

Final Decision : Dismissed

Judgement

1. Learned Single Judge, by the impugned judgment dated 4th February, 2008 [Dewas Soya Limited Vs. Union of India (UOI) and Others,], has directed the appellants herein to comply with the directions issued by Standing Grievance Committee in their orders dated 6th October, 2005 and 27th February, 2006.

2. The respondent herein is an exporter and had made a claim for Duty Free Credit Entitlement which was rejected on the ground that the exports made were against free shipping bills.

3. Aggrieved the respondent herein made a petition before the Standing Grievance Committee who, after hearing the respondent and considering the facts of the case, by their order dated 6th October, 2005, had directed as under :

The Committee gave patient hearing to the petitioner and noted that the claim of the petitioner for Duty Free Credit Entitlement (DFCE) was rejected on the ground that all shipments except two of export of soya bean extraction meals against advance licences were against free shipping bills. The Committee further noted the contention of the petitioner that the requirement of the law would be met as in 13 shipping bills which pertain to advance licence. It was clearly mentioned that goods were being exported against advance licence and in the

remaining 24 shipping bills no export incentive under custom laws was claimed but all the shipping bills were assessed by the officer of the custom as the export product namely soya bean extraction meals attracted cess under the Agriculture and Processed Food Products Export Cess Act, 1985 and hence DFCE was admissible even against the exports against which no export incentive was claimed by the exporter in the shipping bills. The petitioner also stated that he was a manufacturer exporter and the entire exports were manufactured at his factory. The committee appreciated these contentions and was of the view that DFCE claim of the petitioner may be admitted. However as it involved a relaxation of policy, approval of competent authority would be taken before orders are issued.

2. Accordingly it is requested that the decision of the Committee may kindly be implemented immediately and compliance report furnished to this Cell.

4. Subsequently, another order dated 27th February, 2006 was passed to the following effect:

The undersigned is directed to refer to the OM of even no., dated 14-2-2006 on the above mentioned subject and to say that the last sentence of the decision. However as it involved a relaxation of policy, approval of Competent Authority would be taken before orders are issued, stands deleted as approval of the Hon"ble Commerce and Industry Minister has already been obtained before issuing orders.

Accordingly, it is requested that the decision of the Committee may kindly be implemented immediately and compliance report furnished to this Cell.

5. In the order dated 27th February, 2006, it is specifically recorded that approval of Minister of Commerce and Industry for relaxation of the policy in the case of the respondent had been obtained. Still the appellants have refused to implement the order passed by the Standing Grievance Committee forcing the respondent to approach this Court in a writ petition, which has been allowed. In these circumstances, we need not go into the question whether the respondent is entitled to Duty Free Credit Entitlement as the shipments were against free shipping bills and the order passed by the Supreme Court in another case, staying the order passed by the High Court of Gujarat. Relaxation has already been granted to the respondent.

6. Standing Grievance Committee has been appointed and formed by the appellants themselves to deal with grievances of the exporters. The Committee is chaired by the Director General of Foreign Trade and includes heads of all concerned regional licencing authorities. The orders passed by the Standing Grievance Committee have not been challenged and questioned by the appellants by filing any writ petition. Rather the orders have been accepted and even the Minister has accorded his approval. We find difficult to appreciate the stand of the appellant that they have decided not to implement orders passed by the Standing Grievance Committee granting relief to exporters which adversely affect

the Government's stand in the court of law. The approach itself is counter productive and defeats the very purpose of having a redressal mechanism, which is chaired by the Director General of Foreign Trade himself.

7. Keeping these aspects in mind, we are not inclined to entertain the present appeal and the same is dismissed.